Supreme Court, U.S.
FILED
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No. 96-510

IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

WILLIAM BLAND, *et al.*,

Petitioners,

v.

DANIEL WM. FESSLER, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

William Bland, et al. *Plaintiffs,* v. Daniel Wm. Fessler, et al., *Defendants.*	No. CV 94-7275 ER Order Granting Defendant Public Utility Commissioners' Motion For Summary Judgment; Order Entering Judgment

Filed March 13, 1995.
Entered by the clerk, March 15, 1995

The parties came before the Honorable Edward Rafeedie on March 13, 1995, on defendant public utility commissioners' motion for summary judgment. The Court having read and considered the papers filed in support of and in opposition to the injunction and having heard oral argument, GRANTED defendants' motion for the reasons stated in open Court.

Accordingly, JUDGMENT is hereby entered for the defendant Public Utility Commissioners.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the Clerk of the Court shall serve, by United States mail, copies of this Order on counsel for the parties in this matter.

Dated: March 13, 1995.

Honorable Edward Rafeedie, United States District Judge.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

William Bland, et al. *Plaintiffs,* v. Daniel Wm. Fessler, et al., *Defendants.*	No. CV 94-7275 ER Order Granting Defendant Lungren's Motion To Dismiss With Prejudice

Filed March 13, 1995.
Entered by the clerk, March 15, 1995

The parties came before the Honorable Edward Rafeedie on March 13, 1995, on defendant Lungren's motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). The Court having read and considered the papers filed in support of and in opposition to the injunction and having heard oral argument, GRANTED defendant's motion for the reasons stated in open Court.

Accordingly, the action against defendant Lungren is dismissed with prejudice.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the Clerk of the Court shall serve, by United States mail, copies of this Order on counsel for the parties in this matter.

Dated: March 13, 1995.

Honorable Edward Rafeedie, United States District Judge.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

William Bland, et al. *Plaintiffs,* v. Daniel Wm. Fessler, et al., *Defendants.*	No. CV 94-7275 ER

Reporter's Transcript Of Proceedings
Los Angeles, California
Monday, March 13, 1995

Mary Tucker, CSR 9308
Official Court Reporter
429-D U.S. Courthouse
312 North Spring Street
Los Angeles, Calif. 90012
213/687-0530

Appearances:

For the Plaintiff:

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For Defendant Attorney General Lungren:

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Los Angeles, California; Monday, March 13, 1995
(10:00 a.m.)

The Clerk: Civil 94-7275, William Bland v. Daniel M. Fesler.

Counsel, please state your names for the record, please.

Mr. Heinke: Good morning, Your Honor. Rex Heinke and Lincoln Bandlow on behalf of the Plaintiffs.

Mr. Fogelman: Mark Fogelman for the Defendant Public Utilities Commissioners, Your Honor.

Mr. Reiter: Ronald Reiter for Defendant Attorney General Lungren.

The Court: This is a motion by the defendant, Public Utilities Commissioner, for summary judgment.

The Court has read and considered the papers that have been filed in support of an in opposition to the motion. And it is the tentative conclusion of the Court that the motion is well taken; that summary judgment should be granted in this case.

As the Court found in November of 1994, Section 2872 et seq, specifically 2874(A) of the Public Utilities Code, is a content neutral statute. The exceptions it permits are not based upon contents, but upon the basis of a pre-existing relationship between the parties. This dispute is susceptible of a content neutral analysis of this statute.

And the Court again finds that Section 1770(B) regulates on the basis of speech. The commercial speech analysis is appropriate for all practical purposes. The time, manner and place restrictions on

content neutral speech has been held to be substantially similar to a commercial speech analysis.

Since we were last in court, the Ninth Circuit has come down with a case called Mosure v. F.C.C. which the Court believes controls this Court's decision in this case.

The Ninth Circuit opinion in Mosure dealt with the identical state law involved here, almost an identical state law that's involved here. In fact, the plaintiffs in their moving papers for a preliminary injunction relied upon the District Court's opinion in Mosure, which found the federal statute to be unconstitutional. A holding which was subsequently reversed by the Ninth Circuit.

The Court here finds that the government interest of residential privacy is substantial, notwithstanding the exception in the statute which permit the use of pre-recorded messages in limited circumstances. The Court finds that the statutes are narrowly tailored to advance this state interest. And the argument that live calls are no less intrusive than pre-recorded calls, and that by choosing to regulate only pre-recorded calls the law makes arbitrary and unconstitutional distinction, is not well taken. In Mosure this same argument was made, and the Ninth Circuit found that an underinclusiveness argument is relevant in a First Amendment situation only when the regulation is an attempt to give one side of the debatable public question an advantage of expressing its views to the people.

Here the laws do not favor a particular viewpoint. In addition, the Mosure court found that it was permissible for Congress to reduce the volume of the telemarketing calls without completely eliminating the calls.

The Court also finds, as in Mosure, that there are ample channels of communication left open. So in sum, for these reasons, the Court grants the defendant Commissioner's motion for summary judgment. There is no material issue of genuine fact for trial. The statutes are constitutional as a matter of law in the view of the Court.

Do you wish to be heard for the plaintiff?

Mr. Heinke: Your Honor, I would make simply one point which the court hasn't explicitly dealt with; that is, after Your Honor denied the preliminary injunction, I think as the court's knows, we did seek appellate review. Our request for emergency relief was denied, but the Ninth Circuit did expedite that appeal. That appeal is now fully briefed in the Ninth Circuit.

The Court: I already ruled on this request for stay, if that's what you are getting to.

Mr. Heinke: Yes, Your Honor.

The Court: There is no point in arguing it. All right. That will be the ruling.

Mr. Reiter: Your Honor, in addition there is a motion --

The Court: I know, counsel. Just stand by here. The attorney general has filed a motion to dismiss under 12(B)6. The Court has read and considered the papers filed by the attorney general and those opposed. The Court finds that the claim that there is no justiciable case or controversy is not well-taken. There is a case or a controversy sufficient to request declaratory relief.

Now the reasons that I have stated with respect to the Public Utilities Commissioner's motion for summary judgment apply equally here in this case.

The plaintiff's first amended complaint should be dismissed under 12(B)6 with prejudice for the reasons I have stated regarding the other motion for summary judgment brought by the Public Utilities Commissioner.

Mr. Heinke: Thank you, Your Honor.

Mr. Fogelman: Thank you, Your Honor. (Proceedings adjourned.)